

OUTLINE AND PRESENTATION

LESSON PLAN

INTRODUCTION

A. Course Title: **COURTROOM TESTIMONY AND DEMEANOR**

Instructional Goals:

1. This course is designed to provide the student with clear and concise techniques and procedures to effectively prepare for and testify in civil and/or criminal court.
2. This course will also instruct the student of the importance of good police investigations and maintaining a good working relationship with prosecutors.

Instructional Objectives:

Upon completion of this course, the participants will be able to:

1. Identify the need to maintain harmonious prosecutor/police relations.
2. Identify the need to confer with the prosecutor prior to testimony regarding the case and note relevant facts.
3. Identify the need to check that witnesses are ready for court testimony.
4. Identify the need to maintain confidentiality.
5. Identify proper procedure for appearing in courtroom, including attire.
6. Identify proper procedure to present evidence in legal proceedings.
7. Identify proper techniques in providing testimony.
8. Identify the need to discuss problems regarding a past case that should be corrected in future cases with the prosecutor.
9. Identify the relationship between successful prosecution and police reports.
10. Identify situations and procedures when an officer may testify in court.
11. Identify the pre-trial responsibilities and procedures of an officer.
12. Identify non-verbal attributes that affect the officer's testimony.
13. Identify proper reaction or response to common tactics used by defense counsel.
14. Identify procedures to follow when the officer has completed his testimony.

OUTLINE AND PRESENTATION

15. Demonstrate or critique the use of notes when testifying.
16. Identify the ethical issues which may affect the law enforcement officer as he/she prepares for or presents civil or criminal case testimony.

Instructional Methods:

Class lecture with class participation and overheads.

Handouts: N/A

Class Time: 2 hours

Bibliography and Resources:

Maryland Police and Correctional Training Commissions, Training Unit 29, Testimony and Demeanor, 1997.

OUTLINE AND PRESENTATION

LO1

I. Courtroom Testimony and Demeanor

A. The need to maintain harmonious prosecutor/police relations

1. Continuous contact with prosecutor to prepare case for trial.
2. Arrange a pre-trial conference with the prosecutor who will be handling your case.
3. Review the perceived weaknesses and strengths in the case.
4. Determine the prosecutor's strategy for trying the case, and if a plea bargain is pending.
5. Allow the prosecutor to review your case folder and candidly discuss any concerns you might have with the case.
6. There is a direct correlation between accurate, orderly and comprehensive police reports and a subsequent successful prosecution.

LO2

B. The need to confer with the prosecutor prior to testimony regarding case to note relevant facts

1. Many jurisdictions require a pre-trial conference between the officer and the prosecutor.
2. It is always to an officer's benefit if he/she can arrange even a brief overview of the case before trial with the prosecutor, even with minor offenses.
3. The officer should summarize the case to the prosecutor and ensure that the prosecutor knows exactly what the officer(s) in the case can specifically testify to and what evidence is available, also any potential problem areas in the case.

LO3

C. The need to check that witnesses are ready for court testimony

1. Make sure all witnesses are present. You should have the names, addresses, and work/home telephone numbers of all prospective witnesses and complainants.
2. Locate, greet, and introduce each witness and complainant to the prosecutor. Briefly explain the process of a criminal trial and what to expect.

Performance Objectives And Instructional Cues #14.1.05	OUTLINE AND PRESENTATION
LO4	<p>D. The need to maintain confidentiality about the case</p> <ol style="list-style-type: none"> Any information that is known by persons other than those directly involved in the case (i.e. prosecutor, officer, victims, witnesses, etc.) may jeopardize the successful prosecution of the case. The case must remain confidential out of respect for the victims and the victim's families involved in the case.
LO5	<p>E. Proper procedure for appearing in the courtroom, including attire</p> <ol style="list-style-type: none"> First impressions are important! Many people, juries, and judges included, form lasting impressions based on personal appearance and demeanor. Professional bearing and attitude should be the hallmarks of a police officer testifying in court. Depending upon agency and/or court policy, officers may attend court in uniform or civilian attire. An officer must be aware of both the agency and court dress requirements. If attending court in civilian attire, always: <ol style="list-style-type: none"> Wear a business suit or sport jacket. Female officers should also select business/professional attire. Male officers should wear ties. Present a professional, business-like appearance. Hair, beards, and mustaches should be neatly trimmed; ditto for female officers. If attending court in uniform, ensure that your uniform is in good condition. Always remove your hat when entering a courtroom. If court requires that attending police officers be unarmed, officers should make arrangements for storage of their equipment belt in a secure location or in accordance with agency/court policy. <p>F. Proper procedure to present evidence in legal proceedings</p> <ol style="list-style-type: none"> The prosecutor at his/her discretion should present

Performance Objectives And Instructional Cues #14.1.05	OUTLINE AND PRESENTATION
LO6	<p>evidence to the court.</p> <ol style="list-style-type: none"> Police officer should be able to explain how the evidence was located and collected. Do not expose any evidence in the courtroom until it is introduced. All evidence should be properly marked and packaged.
LO7	<p>G. Proper techniques in providing testimony</p> <ol style="list-style-type: none"> The police officer's appearance in court is to provide data to support the charge(s) against the defendant. The officer's personal opinions regarding the accused, the defense lawyer or the criminal justice system in general, are irrelevant. <u>Keep your opinions to yourself.</u> The physical manner and demeanor of an officer when testifying is as important as what he/she actually says on the witness stand. Be conscious of and avoid negative animated gestures. Don't roll your eyes, don't give knowing looks to the jury, don't smirk or gloat, etc. Keep your "street face" intact, no matter what happens. A common problem, even for veteran police officers is "stage fright". This anxiety can result in nervous mannerisms—i.e. facial movements, hand wringing, finger tapping, etc.—which can distract a jury's attention and create an unfavorable impression. When called to testify, the officer should approach the witness stand in a professional, business-like fashion. The oath to testify truthfully will be administered by the bailiff or the court clerk. Acknowledge the oath by stating "I do" and sit down when directed. Position yourself in the witness chair so you have full view of the jury and the trial tables in front of the judge's bench. Sit erect. Both feet on the floor and keep your hands in your lap with your case folder. Stay that way. No exceptions. Your oral delivery of testimony is likewise critical. Your voice and style of speech should convey the same image as your appearance. Speak in a moderate tone and loudly enough that the jurors and judge can hear you. There is usually a microphone at the witness stand to speak into. When responding to attorney's questions, always face them initially. Before answering, turn to face the jury or the judge and direct your response to the question to them. Facing the jury or the judge shows respect and

OUTLINE AND PRESENTATION

- enables them to hear your testimony clearly.
11. The prosecution presents its case first, which is called direct examination of witnesses.
 12. After taking the oath and being seated in the witness stand, you will be asked your name and occupation. Reply in a polite and courteous manner—e.g. “Officer John Doe, _____ Police/Sheriff Department.” If in civilian attire, give your police rank.
 13. After every question asked of you, by either the prosecutor or the defense attorney, pause and carefully consider the question and then give a deliberate answer.
 14. If you did not hear or didn’t understand the question, ask that it be repeated. Make sure you fully understand the question before attempting an answer. **Don’t guess.**
 15. **Don’t volunteer information.** Answer only what is asked of you—nothing less and certainly nothing more. Testifying beyond the scope of the question is the number one cause of police problems while testifying in court. This applies to questions from the prosecutor as well as the defense counsel and the judge.
 16. Try to appear confident while testifying; it is natural and okay to be nervous, even for experienced officers—the adrenaline rush will keep you focused and alert.
 17. Present your testimony clearly, accurately and in chronological order—the prosecutor will usually guide you through the case.
 18. Officers must be respectful in demeanor and speech to all parties of the proceeding. Always address the judge as “Your Honor”, never as “judge” and everyone else as “Sir” or “Ma’am”. Be respectful always; kill them with kindness.
 19. Always answer questions from both the prosecutor and the defense counsel in exactly the same courteous, factual manner. To do otherwise may give the impression of bias on your part.
 20. Always pause briefly before answering a question, because:
 - a. It will ensure that the question is completed.
 - b. It gives the Court Reporter a chance to transcribe it.
 - c. It gives opposing counsel a chance to object.
 - d. Most importantly, it gives the officer a chance to analyze the query and frame an answer.
 21. Be aware of and avoid “Hearsay” testimony. You can only testify to what you saw and heard.
 22. Answers should be complete and strictly to the point.

OUTLINE AND PRESENTATION

- Avoid big words, technical/legal terms and police jargon. You must communicate clearly to the judge and the jury. No slang or “trash talking” and never swear in a courtroom, unless it is absolutely relevant to the case.
23. If the defense attorney attempts to twist your previous testimony, listen carefully, and point out your correct responses. Sometimes, the Court Reporter will be required to read back prior testimony.
 24. Don’t change your testimony, always be consistent. If, however, you make a mistake, alert the prosecutor as soon as possible so that you can be recalled to the stand to correct your response. You may suffer for it, but it is better than letting incorrect testimony stand and come back to haunt you later.
 25. **Don’t guess!** Never guess what the answer to a question is. If you don’t know, simply say, “I don’t know”. Once you say “I don’t know” don’t let the defense counsel lead you into a guess, an estimate, or an assumption. If you honestly don’t remember something, say “I don’t remember” and stick to it.
 26. Unless you are a qualified expert witness, you cannot testify to conclusions or opinions. You should never say: “I think” or “I believe”, or “In my opinion”.
 27. Be alert to objections from both the State and the defense. Stop your testimony immediately and wait for the judge to rule either:
 - a. Sustain-judge agrees with the objection.
 - b. Overrule-judge disagrees with the objection.
 28. The burden of proof in a criminal case is on the part of the State. The prosecutor must prove beyond a reasonable doubt that the defendant committed the offense for which charged. Your testimony is an integral part of that process. Do not treat that responsibility lightly.
 29. Keep your notes handy and be prepared to have the defense demand to review them at some point in the trial.
 30. Use your notes and reports only to refresh your memory when responding to questions—do not read verbatim from your notes. Again, only bring to court your notes that pertain to the case being tried.
 31. When court adjourns for lunch or other reasons, don’t discuss the case where you might be overheard by jurors, spectators, court employees, etc.
 32. Refrain from overdoing the catch phrase “To the best of my knowledge;” use it judiciously.
 33. Don’t try to anticipate or read anything into the defense

OUTLINE AND PRESENTATION

- lawyer's line of questioning—just answer the questions as briefly and concisely as possible, no more, no less.
34. Be patient with your responses. Don't interrupt questions or answer too quickly.
 35. Again, don't volunteer any information. Answer all questions with the shortest possible answer and respond only to the specific information asked. **Know when to stop talking.**
 36. The prosecutor may ask you to identify the defendant in the courtroom. You should have located this individual by now and you should unhesitatingly point him out to the court—e.g. "He is the man at the defense table with the white shirt and blue pants." Also, look directly at the defendant and point to him with your hand.
 37. Don't quote the law while on the witness stand. Judges don't like it and they certainly don't need your help.
 38. Take all the defense pretrial motions in stride; the judge will determine the merit of each motion.
 39. Be disciplined and keep your cool. Don't let a defense lawyer put words in your mouth.
 40. Don't respond to a non-question or vague statement. Always wait for a direct question.
 41. Don't attempt to answer a technical question you don't completely understand. If you don't know, say so right away.
 42. Don't attempt to get into a "battle of wits" with the defense counsel. You will almost always lose because they control the questions.
 43. Remember—the main players in a criminal trial are the judge, the State's Attorney, and the defense attorney. The police officer is an important State's witness, and nothing more.

H. The need to discuss problems regarding a past case that should be corrected in future cases with the prosecutor

1. Try to evaluate and critique your performance on the witness stand. After the trial, ask the prosecutor for an evaluation of your testimony and presentation and ask for constructive suggestions for improvement. Most prosecutors can be very helpful in this regard—it is certainly to their benefit to have competent and qualified police witnesses in future trials.
2. Be objective in your self-analysis; try to learn from your mistakes.

OUTLINE AND PRESENTATION

LO8

I. The relationship between successful prosecution and police reports

1. All of your police reports should be pre-planned and well thought out. Write a rough draft of your police report and be sure it is consistent with the incident that occurred and is well written before the final copy is submitted to the Records Division.
2. A proper police report should include names, addresses, home/work telephone numbers, date of birth, social security numbers, height, weight, hair and eye color, any physical marks, scars, or tattoos, etc. of all persons involved.
3. The police report should include all facts in the order they occurred beginning with the dispatching of the call to the end when the officer completes the call.
4. The police report should include all statement taken and made by any victims, witnesses, or any other persons involved. (If the statement were tape recorded, note this in your report).
5. The police report should include all property or evidence collected and list the procedure used to collect this property/evidence and how this property/evidence was transported and stored.
6. Turn all reports over to the prosecutor for review and discuss the police reports with the prosecutor at the pre-trial conference.

LO9

J. Situations and procedures when an officer may testify in court

1. A police officer may be subpoenaed to testify in both criminal and civil trials.
2. A police officer is usually the main prosecution witness in a criminal trial.
3. A police officer should follow the same procedures (as discussed in **G**) when testifying in criminal or civil trials.

K. Pre-trial responsibilities and procedures of the police officer

1. The police officer is usually the main prosecution witness in a criminal trial and the success of a prosecution may depend entirely on an officer's court testimony.
2. There is no excuse for an officer to come to court unprepared. Critical to this preparation is a comprehensive review of the case with particular emphasis to any physical evidence to be presented.
3. Preparation for court should begin in the course of the

Performance Objectives And Instructional Cues #14.1.05	OUTLINE AND PRESENTATION
LO10	<p>original investigation. This means accurate and comprehensive notes and reports relating to all aspects of the case.</p> <ol style="list-style-type: none"> 4. All activities at the crime scene, all reports, statements, notes and evidence processing should be done with a view to their eventual appearance and examination in a judicial proceeding. 5. Crime scene note taking is critically important. Your notes should be accurate and concise and most importantly, legible and coherent. 6. You may use your notes when testifying only to refresh your memory—you should not read aloud from your notes or your reports.
LO11	<ol style="list-style-type: none"> 7. The officer should read and re-read his notes and reports as many times as necessary to be able to answer the basic who, what, where, why, when, and how without extensive referral to his case folder. 8. The officer is responsible for bringing all recovered evidence into court and returning it. Officers should maintain the chain-of-custody of the evidence in their care and custody. 9. Many jurisdictions require a pre-trial conference between the officer and the prosecutor. This usually occurs at the District Court level. 10. It is always to an officer's benefit if he/she can arrange even a brief overview of the case before trial with the prosecutor, even with minor offenses. 11. The officer should summarize the case to the prosecutor and ensure that the prosecutor knows exactly what the officer (s) in the case can specifically testify to and what evidence is available—also any potential problem areas in the case. 12. Mentally rehearse your testimony. Try to anticipate questions from the defense attorney. Identify the strengths and weaknesses in your case and plan ahead to answer challenges to your reports and evidence.
Stop 4/28	<ol style="list-style-type: none"> 13. Police officers should ensure that important witnesses and complainants are properly summoned into court; this is usually the responsibility of the Court Clerk. Officers should have the correct names, addresses, and telephone numbers of witnesses listed in their reports. 14. In some cases, the police officer may be responsible for transporting victims and witnesses to court. Arrangements with victims/witnesses who may need transport should begin when the officer first receives a court summons. 15. Officers should prepare <u>case folders</u> for all felony and

OUTLINE AND PRESENTATION

serious misdemeanor offenses in which they investigate and effect arrests. Case folders should normally contain the following:

- a. Photocopies of the offense report and supplements.
- b. Photocopy of the arrest report.
- c. Copies of Criminal Complaint
- d. Laboratory Reports, including fingerprint comparisons, ballistics, polygraph and other forensic tests.
- e. Medical and hospital reports, including autopsy reports.
- f. Crime scene photographs.
- g. Line-up Identification reports, including photo arrays used in photo line-ups.
- h. Miranda waiver cards/forms.
- i. Prosecution report, if used, including a list of all seized evidence and the chain-of-custody of all evidence.
- j. Copies of arrest and search warrant affidavits.
- k. Criminal records (Triple I) of all defendants.
- l. Written statements obtained from defendants and witnesses.
- m. Any other pertinent or relevant documents that pertain to the case and/or the defendants, including any data obtained from law enforcement automated systems—e.g. NMLETS, NLETS, NCIC, etc.
- n. Copy of your court subpoena.

16. Officers should retain their original notes in their personal possession and not place them in an agency case file. Ascertain your agency's policies in this regard.
17. Officers should develop the mind set that every official report they complete may someday be critically examined in an adversarial setting. **Only the facts as you know them!** No opinions, assumptions, estimates, or "editorializing."

L. Non-verbal attributes that affect a police officer's testimony

1. The physical manner and demeanor of an officer when testifying is as important as what he/she actually says on the stand.
2. Do not make animated gestures, don't roll your eyes, don't give knowing looks to the jury, don't smirk or gloat-- Keep your "street face" intact, no matter what.

OUTLINE AND PRESENTATION

LO12

3. A common problem, even with veteran officers is “stage fright”. This anxiety can result in nervous mannerisms—i.e. facial movements, hand wringing, finger tapping, etc.—, which can distract a jury’s attention and create an unfavorable impression.

M. Proper reaction and/or responses to common tactics used by defense counsel

1. No matter what the defense counsel says, **don’t take it personally**. Remain calm and stay alert. Be flexible. “Sticks and stones...”
2. Always pause before answering anyone’s question—this includes the prosecutor or the judge—than respond with a deliberate answer.
3. If you didn’t hear and didn’t understand the question, ask that it be repeated. If you don’t know, say so. If you truly don’t remember, say so. **Don’t guess**.
4. Last, but not least—**ALWAYS TELL THE TRUTH**. Do not lie, exaggerate, omit, distort, overstate or otherwise “stretch” the truth. Predictably you will be found out and your credibility, and what’s left of your self-respect, will go south, along with your career prospects in law enforcement.
5. The same caution applies to the reports you wrote on the case in question. If a court or an agency trial board finds you guilty of a false police report, you can never again be a credible witness in a judicial proceeding.
6. The oath you took before testifying requires that you “tell the truth, the whole truth and nothing but the truth.” If that doesn’t impress you, consider this:

“Every person who shall be convicted of perjury or subornation of perjury shall be sentenced to imprisonment in the jail or the penitentiary for not more than 18 months.”

N. Procedures to follow when an officer has completed his testimony

1. After you complete your testimony, return to your seat in the courtroom, or to a designated area if you were sequestered; you may be recalled to the witness stand several more times, by the State and/or the defense.
2. At the end of testifying, don’t make any gestures or signals to other officers or the prosecutor, also don’t gloat or sneer at the defendant, his lying friends or shyster attorney. Just walk back to your seat; its out of your hands.
3. Try to evaluate and critique your performance on the witness stand. After the trial, ask the prosecutor for an

LO13

OUTLINE AND PRESENTATION

LO14

- evaluation of your testimony and presentation and ask for constructive suggestions for improvement. Most prosecutors can be very helpful in this regard—it is certainly to their benefit to have competent and qualified police witnesses in future trials.
4. Be objective in your self-analysis; try to learn from your mistakes.
 5. Do not leave the courtroom until either the judge or the prosecutor excuses you.
 6. If found guilty, the defendant may not be immediately sentenced until a pre-sentence report has been prepared for the trial judge, usually by the local Probation Department. This process, however, may take several weeks. You should make a mental note to call the prosecutor at a later time to learn the sentence rendered.
 7. Make sure that you recover all the physical evidence you brought to the courtroom and return same to its designated repository. **Return all evidence immediately after trial**—don't take it home with you or leave it in the car overnight.
 8. Prepare a supplemental report to your offense and arrest reports indicating the results of the trial and the disposition of the accused, if available.
 9. If you are on duty status, return to your unit of assignment and notify dispatch and your supervisor of your return. If you were off-duty, don't forget to have your overtime slip verified by the Court Clerk.
 10. That tired old cliché "its not whether you win or lose, its how you play the game", is pertinent in this regard. You can't win them all, but win, lose or draw; you can remain a consummate professional in the manner in which you conduct yourself in court.

O. The use of notes when testifying

1. Only bring your notes that pertain to the case that is being tried to the court with you.
2. The officer should read and re-read his/her notes as many times as necessary to be able to answer the basic who, what, where, why, when, and how without extensive referral to his/her case folder.
3. Do not keep your original notes in your case folder; but do have them readily available in court.
4. Use your notes only to refresh your memory when responding to questions—do not read verbatim from your notes.

P. Ethical issues which may affect the law enforcement officer as he or she prepares for or presents civil or

OUTLINE AND PRESENTATION

criminal testimony

1. **ALWAYS TELL THE TRUTH.** Don not lie, exaggerate, omit, distort, overstate or otherwise “stretch” the truth. Predictably you will be found out and your credibility, and what’s left of your self-respect, will go south, along with your career prospects in law enforcement.
2. The same caution applies to the report you wrote on the case in question. If a court or an agency trial board finds you guilty of a false police report, you can never again be a credible witness in a judicial proceeding.

LO15

LO16

**Performance Objectives
And Instructional Cues
#14.1.05**

OUTLINE AND PRESENTATION